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No. 689

In the Supreme Court of the United States

OCTOBER TERM, 1958

HUBERT R. GROGAN, PETITIONER

v.

UNITED STATES OF AMERICA

HUBERT R. GROGAN, CLAIMANT, AND RUBY ALENE ANDERSON, SURETY, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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OPINION BELOW

The opinion of the Court of Appeals in the criminal case (Pet. 8–10) is reported at 261 F. 2d 86. The opinion in the forfeiture case (Pet. 13–15) is not yet reported.

JURISDICTION

The judgment of the Court of Appeals in the criminal case was entered on December 9, 1958 (Pet. 11), and in the forfeiture case, on November 19, 1958

(Pet. 16). Petitions for rehearing were denied on January 12, 1959 (see Pet. 3). The petition for writs of certiorari was filed on February 7, 1959. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether there was sufficient reasonable cause to search a heavily laden truck belonging to petitioner, who was on probation for violation of federal liquor laws, where the officers knew petitioner had been using the truck to transport materials used in the illicit manufacture of whiskey.

STATUTE INVOLVED

26 U.S.C. 7301 provides as follows:

§ 7301. *Property subject to tax.*

* * * * *

(b) *Raw Materials.*

All property found in the possession of any person intending to manufacture the same into property of a kind subject to tax for the purpose of selling such taxable property in fraud of the internal revenue laws, or with design to evade the payment of such tax, may also be seized, and shall be forfeited to the United States.

* * * * *

(c) *Conveyances.*

Any property * * * used to transport or for the deposit or concealment of property described in subsection (a) or (b) may also be seized, and shall be forfeited to the United States.

STATEMENT

Petitioner is seeking certiorari from the judgments in two related cases—one involving the revocation of probation of a 1955 judgment of conviction for the violation of the federal liquor law. Imposition of sentence on that conviction was suspended in 1955 and petitioner was placed on probation for a period of two years. The terms of the probation order required that "the defendant shall conduct himself as a law-abiding, industrious citizen * * *" (R.R.[1] 6–8). In 1958, that probation was revoked when petitioner was found transporting materials usually used in the manufacture of alcohol. The other judgment involves the forfeiture by the United States under 26 U.S.C. 7301 and 7302 of the truck and the materials found therein. Both judgments were affirmed on appeal (Pet. 11, 16).

The following evidence was adduced in both cases:[2]

Federal revenue agents had knowledge prior to May 7, 1957, the day on which petitioner's truck was seized and he was arrested, that he was on probation for a federal alcohol violation, that he had a reputation as a known federal liquor violator, and that for several weeks, beginning on April 25, 1957, he had been buying and hauling raw materials commonly used for the illicit manufacture of liquor (R.F. 17–18,

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[1] The symbol "R.R." refers to the printed record in the case on the revocation of probation. The symbol "R.F." will be used to refer to the mimeographed record in the forfeiture case.

[2] The determination of the revocation of probation was made, with the consent of counsel, on the basis of the evidence filed in the forfeiture case (R.R. 12).

20–21, 22, 25, 34)—large quantities of sugar, malt, rye meal and yeast (R.F. 15).

The knowledge as to the purchases came from reports filed by the merchants from whom the materials were purchased and the information received included the license number of the truck to which the materials were delivered (R.F. 15–17, 35).

On May 7, 1957, federal revenue agents happened to see petitioner drive by in his truck. The truck appeared to be heavily loaded (R.F. 14, 20). When petitioner saw the officers, he attempted to hide his face from their view (R.F. 14–15). The officers followed petitioner for a while and noted that the truck bore the license tag number contained in the reports on petitioner's purchases (R.F. 15–17).

Although the officers had known that petitioner had transported the materials in the past, they had no previous knowledge of the present location of the truck and did not know petitioner's address (R.F. 39–40). It was customary in the hauling of materials such as those involved here to dispose of them quickly (R.F. 41).

After following petitioner for a while, the officers stopped him. They asked him what he had in the truck and he said "sugar and malt" "88 bags" (R. 18, 30). He said that he was going to sell the material. When further questioned he said that he had no business or place of business (R.F. 30–31).

The officers then opened the door of the truck and found 8,800 pounds of sugar, 800 pounds of malt sprouts, 150 cases of ½ gallon glass jars and 50 pounds of dry yeast—all materials which are nor-

mally used in the illicit manufacture of whiskey (R.F. 3, 20, 21). The truck and the materials were seized (R.F. 2–3) and a judgment of forfeiture was issued by the district court in November, 1957 (R.F. 60–63).

During the forfeiture trial, which was held without a jury, petitioner filed a motion to suppress on the ground that the search and seizure were illegal. The court in its findings of fact found that the officers had probable cause to make the search without a warrant and that the seized materials were forfeitable. It denied the motion to suppress (R.F. 57–59).

Based on this action, petitioner's probation was revoked (R.R. 9, 21, 22).

ARGUMENT

The decisions of this Court in *Brinegar* v. *United States*, 338 U.S. 160, and *Carroll* v. *United States*, 267 U.S. 132, establish that a moving vehicle may be stopped and searched without a warrant on probable cause to believe that it is being used in violation of the laws of the United States. The right at issue is the right to search, rather than the right to arrest. Because of the mobile nature of the vehicle, the search, even though without a warrant, is regarded as reasonable under the Fourth Amendment if it is made on probable cause to believe that the vehicle is being used in violation of law.

The probable cause to justify a search has been defined by this Court in *Brinegar* and *Carroll* as facts and circumstances within the knowledge of the officers, or of which they had reasonably trustworthy

information, sufficient to warrant a man of reasonable caution in believing that an offense is being committed. The courts below properly found that the facts and circumstances within the knowledge of the officers at the time of the search here were sufficient to justify the stopping of the automobile. The officers knew, from formal reports filed by merchants, that petitioner had been buying large quantities of materials normally used in making illicit liquor, and that he had been hauling the materials on a truck bearing the license plates observed on the truck at issue. They knew that petitioner was a known liquor violator. They saw that the truck was heavily loaded and noted that petitioner tried to conceal his identity from them. Together, these circumstances were sufficient to meet the "reasonable man" test of *Brinegar* and *Carroll*.[3] They are indeed very similar to the facts held sufficient in *Brinegar* and *Carroll*, and possibly even stronger since here the knowledge of petitioner's activities in buying materials for use in making liquor came, not from an individual informant, but from the reports of the merchants. This information was within the knowledge of the officers before they stopped the car. As in *Brinegar*, the statements by petitioner after the truck was stopped, but before the search, reinforced the probable cause which the officers already had, but there was

[3] This Court has granted certiorari in *Henry* v. *United States*, No. 559, Oct. Term, 1958, also involving the search of a moving vehicle. The circumstances there, however, are so different from those in this case that we do not believe the grant of certiorari in *Henry* bears on the issues here.

ample probable cause without reliance on such statements. There is thus no occasion to review the findings of both courts below.[4]

CONCLUSION

It is respectfully requested that the petition for writs of certiorari should be denied.

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[4] Since the Court of Appeals found that the motion to suppress had been properly denied on the ground that there was probable cause for the search, the question presented by petitioner, based on dictum in the opinion below—as to whether the truck could have been forfeited even if the motion to suppress had been granted—is not presented by this case. Petitioner has, in any event, misread the decision below. The court below has not held, as petitioner seems to believe, that suppressed evidence could be offered in a forfeiture proceeding. A reading of the cases cited by the Court of Appeals in its dictum (Pet. 14–15) shows that it was referring to the rule that, if there was other evidence that the truck had been used in violation of the revenue laws before it was seized, an infirmity in the method by which the truck was seized would not enable the claimant to get the truck back since title would have already passed to the United States because of the owner's prior illegal action. In this case other evidence of illegal use, independent of that deriving from the seizure, was presented (R.F. 35).

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